

PARISH POLLS

This Legal Briefing replaces an earlier briefing that was disseminated by NALC in 1999.

The purpose of an assembly of a parish meeting and any subsequent poll is for the local government electors in a parish to express views on matters or questions which constitute “parish affairs”. Neither legislation nor caselaw define the phrase “parish affairs”. In NALC’s view, these are matters which are specific to the local government electors resident in a particular parish. Discussions at an assembly of a parish meeting may lead to a vote on a particular question which would indicate support for or opposition to it amongst those in attendance. The result of any question put to the vote is final unless a poll on the question is then demanded. The purpose of a parish poll is to test the results of a vote on a question at an assembly of a parish meeting against the results of a vote on the same question by a poll of all the local government electors in a parish. In other words, a poll of all the electors in a parish would confirm if the views held by a parish meeting were more widely supported. In accordance with sections 150(2) and (7) of the Local Government Act 1972 (the 1972 Act), in a parish with a separate parish council, the expenses of a parish meeting including the expenses of a subsequent parish poll are borne by the parish council. Such costs are reflected in the council tax charges levied on the local electorate in that parish.

NALC is aware that previously the UK Independence Party (UKIP) and the Campaign Alliance for Referendums in Parishes (CARP) have been instrumental in convening or encouraging assemblies of parish meetings to debate the UK’s membership of the European Union and or the EU Reform Treaty/Treaty of Lisbon. This has resulted in some parish polls voting on the question “Should there be a national referendum on Europe?”. In NALC’s view, debate concerning the UK’s membership of the EU or the UK’s ratification of the EU Reform Treaty and whether there should be a national referendum on the same are matters outside the powers of a parish meeting and beyond the purpose and remit of a subsequent parish poll. In NALC’s opinion, a parish meeting and any subsequent poll concerned with an issue or question unspecific to a particular parish or which have a wider or national interest are unlawful.

In the case of *Letchworth Garden City Heritage Foundation v (1) the Returning Officer for the District of North Hertfordshire and (2) the Chairman of the Parish Meeting of Letchworth Garden City (2009)*, the High Court considered the history and purpose of parish meetings and the possible meanings of the phrase “parish affairs.” Whilst this case did not define or give modern examples of what would constitute “parish affairs”, it indicated that the High Court is likely to view a parish affair as any matter specific to a parish in which the local government electors in that parish have a legitimate and genuine interest.

In the above case, the Claimant Foundation judicially reviewed a poll organised by the first Defendant, being the District Council’s returning officer. The Claimant Foundation owned the estate of Letchworth Garden City, and the area was within the jurisdiction of Hertfordshire County Council, Letchworth Garden City Town Council and the Claimant Foundation. There

was tension in the local community between those who regarded the Claimant Foundation as effective and the town council as redundant, and others who wished see the Foundation replaced by a directly elected body. At an assembly of the parish meeting, there were discussions as to whether the Claimant Foundation's governance structures should be changed. The next day, the 2nd Defendant being the Chairman at the assembly of the parish meeting (and the Chairman of the town council) notified the district council of a request for a poll on the issue. The Claimant Foundation argued that the poll, and by extension the parish meeting or discussions by the parish meeting in respect of Foundation's governance structures, were beyond the parish council's powers, because the governance of the Foundation was not a "parish affair" within the meaning of section 9 of Local Government Act 1972. The Foundation's claim was unsuccessful. As some of the Foundation's governors were appointed or elected from within the parish, the High Court held that the parish had a straightforward and obvious role to play in the Claimant Foundation's governance. The High Court held that the Foundation's governance structures and any change in those nominated from within the parish to serve as governors of the Foundation fell within the definition of the term "parish affairs", were properly the subject of discussion by the parish meeting and properly the subject of the poll.

The remainder of this briefing provides guidance on the functions of a parish meeting and the steps which need to be taken to ensure that the business transacted at an assembly (or meeting) of a parish meeting complies with statutory requirements. The relevant legislation relating to parish meetings is found in sections 9 and 13 and schedule 12 of the 1972 Act.

Section 9(1) of the 1972 Act provides:-

*"For every parish there shall be a parish meeting for the purpose of discussing **parish affairs** and exercising any functions conferred on such meetings by any enactment ..."*

Section 13 (1) of the 1972 Act provides:-

"The parish meeting of a parish shall consist of the local government electors for the parish. "

A parish meeting is not a local authority within the definition of section 270(1) of the 1972 Act, however it is a public body exercising public functions and as such any decision, action or failure to act in relation to the exercise of its public function is capable of being judicially reviewed.

Paragraph 14, schedule 12 of the 1972 Act requires there to be at least one assembly of a parish meeting in each year. The annual assembly must take place between 1st March and 1st June.

In addition and in accordance with paragraph 15, schedule 12 of the 1972 Act a parish meeting may be convened by

- (i) the Chairman of the parish council or
- (ii) any two parish councillors or

- (iii) or where there is no parish council, the chairman of the parish meeting or any person representing the parish on the district council or
- (iv) any six local electors for the parish

There are detailed rules concerning the period of notice for an assembly of a parish meeting and also the content of the public notice. Advance public notice must specify the time and place of the meeting and the business to be transacted at the meeting. The notice must be signed by those convening the meeting.

Whereas a parish meeting or a parish poll permit the expression of local opinion on issues specific to the residents of a parish, particularly where no parish council exists, the resolutions made by a meeting are rarely binding. However a resolution for a parish council to provide allotment gardens will trigger a parish council's duty under s. 23 Small Holdings and Allotments Act 1908 to consider if their provision of allotment gardens is sufficient to meet demand.

In a parish with a separate parish council, an assembly of a parish meeting may be convened by members of the parish council (including the Chairman) or by 6 local government electors. Where there is a separate parish council, its members can play a key role in convening, attending and setting the agenda for an assembly of a parish meeting. A parish council therefore may be able to prevent a parish meeting debating matters which are not parish affairs. In a parish where there is a separate parish council, the Chairman of the parish council is strongly urged to attend an assembly of a parish meeting, in accordance with paragraph 17, schedule 12 of the 1972 Act, which provides –

“In a parish having a separate parish council the Chairman of the parish council if present, shall preside at a parish meeting and if he is absent the Vice-Chairman (if any) shall, if present preside.”

The significance of paragraph 17 means that if the Chairman or if he is absent the Vice-Chairman of the parish council attends but does not preside at an assembly of a parish meeting, it will need to be reconvened at a later date.

The non-attendance of the Chairman or Vice Chairman of the parish council requires the parish meeting to appoint someone else in attendance to preside. This person may not possess the necessary legal knowledge, skills and experience which the Chairman or Vice Chairman of the parish council is expected to have and can use if he attends and presides an assembly of a parish meeting. The chairman of an assembly of a parish meeting should ensure that discussions are confined to “parish affairs.” As soon as discussion or questions move to matters which do not constitute parish affairs, the chairman should intervene. Discussions, votes and any demands for a poll on matters which do not constitute parish affairs should not be permitted because they are outside the powers of a parish meeting. The Chairman should remind local government electors attending the meeting that the cost of funding a parish poll, should one be demanded, will be borne by the parish council and ultimately by the local government electors as a council tax liability to finance the parish council's precept. The chairman should also remind the meeting that the outcome of a poll is not binding (certainly in respect of matters of national interest) and in any event is unlikely to have significant impact or influence.

An issue is initially decided by the majority *of those present* at the meeting and voting on it. At an assembly of a parish meeting each local government elector is given *one vote* only. The person presiding the meeting, in addition to any ordinary vote he may have, has a casting vote.

If the chairman is unsuccessful in his attempt to dissuade the local electorate that certain business is outside the powers of a parish meeting or the issue/question cannot be resolved by a vote, schedule 12 paragraph 18(4) of the 1972 Act provides that a poll may be demanded before the end of a parish meeting on “*any question arising at the meeting.*” A poll may only be demanded where:

- a) the person presiding at the meeting consents or
- b) this is demanded by not less than 10 or one third of the electors present meeting, *whichever is the less.*

The Court of Appeal in *Bennett v Chappell* (1965) 3 WLR 829 has given some clarification as to when a poll may be demanded.

“...A poll at a Parish Meeting is not like a poll at a Company Meeting...the poll which can be demanded at a Parish Meeting is a poll of the whole electorate in the parish and not merely those present in the meeting...” Lord Denning, M.R.

Although this case was based on the interpretation of Schedule 3 of Local Government Act 1933, the wording is very similar to provisions in the 1972 Act. In the above case, the Court of Appeal held that the right to request a poll only applies to the question (or amendment to it) at the meeting which requires a decision and has been voted on. **In short, a poll can only be demanded on a question which has been the subject of a vote at a parish meeting.** In the Court of Appeal case, there was comment by Winn L.J, which has not since been tested, that the subject matter of the poll could be broadly along the lines of the question resolved by majority vote. However this would still need to directly relate to the business for which an assembly of the parish meeting has been convened.

NALC acknowledges that a chairman’s attempts to confine debate to parish affairs or to dissuade the local electorate demanding a poll on matters which are not parish affairs may not be successful.

The chairman of an assembly of a parish meeting is required to notify the district council for the area in which the parish is situated that a poll has been demanded. Details of the poll demanded must be provided to the returning officer. At this stage, if the chairman does not consider that the subject of the poll constitutes a parish affair as defined by section 9 of the 1972 Act, he should confirm this to the returning officer. It will however take a steadfast returning officer to resist holding a poll because such a decision may ultimately result in the district council being judicially reviewed.

The poll is conducted by the returning officer of that council. The poll itself is governed by the rules made by the Secretary of State under the Representation of the People Act 1983 – see the Parish and Community Meeting (Polls) Rules 1987 (S.I. 1987 No.1) as amended.

Under the current legislation, a demand for a parish poll may be triggered with relative ease. NALC has previously lobbied and continues to lobby for amendments to schedule 12 of the 1972 Act which would have the effect of increasing the minimum number of persons required to demand a poll.

**This briefing was issued by Mandy Byfield, Legal Executive
and updated by Meera Tharmarajah, Solicitor and Head of Legal Services**

© NALC 2009